



Indiana Judicial Nominating Commission
30 South Meridian Street
Suite 500
Indianapolis, IN 46204
(317) 232-4706

APPLICATION
FOR THE
COURT OF APPEALS OF INDIANA

Deadline – 12:00 p.m., April 27, 2015

The application for the August 2015 vacancy in the Second District of the Court of Appeals of Indiana includes two parts. Both Part One and Part Two must be completed. Part Two *must* be provided separately as directed in the instructions. Answers in Part One and Part Two are a matter of public record and will be supplied to the media and public upon request. However, only answers in Part One may be posted online by the Indiana Judicial Nominating Commission.

PART ONE, Sections 1 – 11

1. Contact/General Information

A. Full legal name and any former names.

Joel Matthew Schumm

B. State the full name (use initials for minor children), age, and relationship of each person residing in your household. For each adult living in the household (other than yourself), also state the person's occupation and employer.

None

C. Business address, email, and telephone number.

Indiana University Robert H. McKinney School of Law
530 W. New York Street #229
Indianapolis, Indiana 46202
jmschumm@iupui.edu
(317) 278-4733

D. Attorney number.

20661-49

E. Month and year you were admitted to the Indiana Bar.

May 1998

a. Indicate current law license status, i.e. active/inactive/retired.

Active

b. If you are or have been a member of the Bar of any other state, identify the jurisdiction and provide date(s) of admission and current license status.

None

F. Date and place of birth.

October 31, 1970 in Celina, Ohio

G. County of current residence and date you first became a resident.

Marion County, Indiana since September 1992

2. Secondary Education/Military Experience

A. List all undergraduate colleges and universities you attended. Include the school name; dates enrolled; degree or certificate earned; and any academic honors, awards, or scholarships you received and when.

<u>School</u>	<u>Dates Enrolled</u>	<u>Degree or Certificate</u>
Ohio Wesleyan University	August 1989-May 1992	B.A., <i>summa cum laude</i> Majors: Accounting; Politics & Government
Wright State University	During high school & Summers 1990 & 1991	non-degree student

Honors at Ohio Wesleyan

Presidential Scholarship (full tuition)

Phi Eta Sigma (freshman honorary)

Phi Society (sophomore honorary)

Pi Sigma Alpha (political science honorary)

Phi Beta Kappa

Departmental Honors in Politics & Government
Outstanding Major in the Economics Department

- B. Include with your original application a certified transcript from each school named in Subsection 2A and attach copies of each transcript to each application copy. (If your social security number is on your transcripts, redact it *before* copying.)
- C. If applicable, list any military service. Include the name of the military branch; dates of service; last rank achieved; and any honors, awards, or commendations received and when. Attach a copy of your Certificate of Release or Discharge from active duty (“DD 214” paperwork).

Not applicable

3. Post-Secondary Education

- A. List all law schools, graduate schools, and post-J.D. programs attended. Include the school name; dates enrolled; degree or certificate earned; class rank; and any academic honors, awards, or scholarships you received and when.

<u>School</u>	<u>Dates Enrolled</u>	<u>Degree and Class Rank</u>
Indiana University Robert H. McKinney School of Law	August 1994-May 1998 (evening division)	J.D., <i>magna cum laude</i> (Top 10%)
University of Cincinnati	September 1993- June 1994	M.A. Political Science 4.0/4.0 GPA

Law School Honors

Indiana University Law Scholarship
Indiana University-Indianapolis Law Alumni Association Board Scholarship
Robert S. Smith Scholarship
Harrison & Moberly Scholarship
Articles Editor, *Indiana Law Review*
Corpus Juris Secundum Award for Excellence in Contracts

Graduate School Honors

Charles Phelps Taft fellow (full-tuition plus stipend)

- B. Include with your original application a certified transcript from each school named in Subsection 3A and attach copies of each transcript to each application copy. (If your social security number is on your transcripts, redact it *before* copying.)

4. Employment

- A. Provide your employment history since graduation from college. Include name of employer, titles or positions, locations, and dates of employment.

Accountant/Trainee, U.S. Department of Veterans Affairs
1481 W. Tenth Street, Indianapolis, Indiana 46204
September 1992-September 1993

Deputy Clerk, Marion County Clerk's Office
200 E. Washington Street, Indianapolis, Indiana 46204
June 1994-December 1994

Clerk/Bailiff, Marion Superior Criminal Court Five (Judge Gary Miller)
200 E. Washington Street, Indianapolis, Indiana 46204
January 1995-June 1998

Judicial Clerk, Indiana Supreme Court (Justice Theodore R. Boehm)
200 W. Washington Street, Indianapolis, Indiana 46204
July 1998-June 2000

Judicial Clerk, Indiana Court of Appeals (Judge Paul D. Mathias)
200 W. Washington Street, Indianapolis, Indiana 46204
July 2000-August 2001

Clinical Professor of Law, Indiana University Robert H. McKinney School of Law
530 W. New York Street, Indianapolis, Indiana 46202

- Director of Experiential Learning October 2014-present
- Clinical Professor of Law 2008-present
- Clinical Associate Professor of Law 2005-08
- Clinical Assistant Professor of Law 2002-05
- Lecturer in Law 2001-02
- Adjunct Professor 1999-2001

Contractual Appellate Public Defender, Marion County Public Defender Agency
151 N. Delaware Street, Indianapolis, Indiana 46204
August 2001-present (except for 2008, when I served as Training Coordinator)

- B. If applicable, describe the nature and extent of your practice of law (present and former) and provide the names of your partners, associates, office mates, and employers.

During my two-year clerkship with Justice Boehm I assisted in the research and drafting of opinions, primarily in criminal cases including death penalty cases. As

a clerk I also regularly attended oral arguments and discussed cases with the other clerks and the judge. My co-clerks were Cynthia Bauerly, Cynthia Bedrick, and Deborah Pollack-Milgate. Debra Moss was the judicial assistant.

During my one-year clerkship with Judge Mathias, I assisted in the research and drafting of opinions in more than sixty cases involving a wide range of civil and criminal issues. My co-clerks were Claire Grove and Jody DeFord. Maxine Helburn was the judicial assistant.

In addition to teaching a variety of courses, I have litigated more than thirty appeals through the Appellate Clinic at the Indiana University Robert H. McKinney School of Law, as described further in Question 7.D. I worked with Adjunct Professor Patricia McMath during the fall semesters in 2013 and 2014 in supervising students in the Appellate Clinic. During my fourteen years at the law school, I have worked with Deans Norman Lefstein, Tony Tarr, Susie Mead, Gary Roberts, and Andrew Klein as well as Associate/Vice Deans Susie Mead, Andrew Klein, Paul Cox, and Antony Page. My closest office mates have been Cynthia Adams, James Dimitri, Allison Martin, Deborah McGregor, and Joan Ruhtenberg (until her retirement in 2014).

I have litigated more than 100 appeals as a contractual appellate public defender with the Marion County Public Defender Agency.¹ The majority of appeals have been adult felony cases and juvenile delinquency cases. I have also been assigned cases involving civil (mental health) commitments and contempt findings. Each appeal has involved, at a minimum, reviewing the trial record, speaking with trial counsel and the client, researching the pertinent legal issues, and filing a brief on behalf of the appellant. I have also filed a reply brief in nearly every case. Oral argument was scheduled in several of these cases. If the client did not prevail in the Court of Appeals, I have often filed a petition to transfer to the Indiana Supreme Court. The appellate administrators at the Marion County Public Defender Agency have been Ann Sutton and Ruth Johnson.

Based on my appellate work, I have been voted by my peers as one of fewer than thirty Indiana lawyers selected as Best Lawyers® in the area of Appellate Practice for the past three years.

5. Trial/Judicial Experience

A. Describe the extent of your jury trial experience, if any.

¹ In addition to the appeals assigned to me through the Marion County Public Defender Agency (a maximum of ten each year) and those litigated pro bono and through the Appellate Clinic, I have been assigned one appeal from the State Public Defender and five appeals from the Shelby County Public Defender. I have also served as counsel or co-counsel in numerous amicus cases and as co-counsel in two appeals with private counsel.

I presided as a judge *pro tempore* over a one-day felony jury trial in Marion Superior Criminal Court Five in 1999.

I represented myself in a jury trial involving an inoperable taillight in Allen County in 2006.

For three and a half years while attending law school in the evening, I worked as a clerk/bailiff in a major felony court in Marion County. My duties included overseeing jurors during trial and deliberations and sometimes assisting with jury instructions. Through more than sixty jury trials, I was able to gain a deep understanding and appreciation for the role of the jury in our system of justice and learned a great deal through post-verdict discussions with jurors.

B. Describe the extent of your bench trial experience, if any.

I have represented individuals in a variety of hearings in trial courts, including arguing motions in criminal and juvenile delinquency cases as well as in adult probation and modification of sentence hearings.

I presided as a judge *pro tempore* over a bench trial and numerous hearings in Marion Superior Criminal Court Five in 1998 and a few hearings in 2012 and 2014. I presided over an appeal of a small claims judgment in Marion Superior Civil Court Five in 2003.

C. If applicable, describe the nature and extent of your judicial experience (including as a judge *pro tempore*). Include a description of your experience presiding over jury trials, if any.

As described above, I have presided over both a bench and jury trial and numerous hearings as a judge *pro tempore* in Marion County Superior Court.

As summarized in Question 4.A., I have also served as a judicial clerk for both the Indiana Supreme Court and Indiana Court of Appeals for a total of three years after law school.

6. Professional Experience

Include as writing samples, four selections (in total) from the written materials listed below in Subsections 6A – 6C.

The four items denoted by an asterisk below have been included as writing samples

A. If applicable, list up to five trial or appellate briefs and/or judicial opinions you have written. Refer to them by caption, case number, and filing date.

As a law clerk at the Indiana Supreme Court and Indiana Court of Appeals, I assisted in drafting more than 110 judicial opinions. Over the past fourteen years, I have authored more than 300 briefs (Appellant, Reply, Petitions for Rehearing or Transfer, and Amicus) in more than 150 cases. A sampling of these include:

1. *In re Civil Commitment of T.K. v. Dep't of Veterans Affairs*, 49A02-1310-MH-878, Appellant's Petition to Transfer, filed May 5, 2014.*
2. *Barnes v. State*, 82S05-1007-CR-00343, Brief Of Amici Curiae Senators M. Young, Long, Alting, Banks, Becker, Boots, Bray, Buck, Charbonneau, Delph, Eckerty, Gard, Glick, Grooms, Head, Hershman, Holdman, Hume, Kruse, Landske, Lawson, Leising, Merritt, Miller, Mrvan, Nugent, Paul, Randolph, Schneider, Smith, Steele, Taylor, Tomes, Walker, Waltz, Waterman, Wyss, Yoder, R. Young, Zakas, and Representatives Behning, Brown, Burton, Cheatham, Cherry, Culver, Davis, Dembowksi, Dermondy, Dodge, Eberhart, Ellspermann, Foley, Friend, Heaton, Hinkle, Kersey, Klinker, Koch, Leonard, Mahan, Morris, Moses, Neese, Rhoads, Saunders, Speedy, Torr, Turner, Tyler, and Wolkins in Support of Appellant's Petition for Rehearing, filed June 8, 2011.
3. *Alexander Anglemeyer v. State of Indiana*, No. 43A05-0510-CR-590, Appellant's Petition to Transfer, filed May 16, 2006.
4. *A.H. v. State of Indiana*, No. 49A04-0302-JV-73, Brief of Appellant, filed May 2, 2003.
5. *Stout v. Underhill*, No. 62A01-9912-CV-426, Court of Appeals' Opinion issued September 13, 2000.* (I assisted in researching and drafting this opinion during my clerkship with Judge Mathias; please see coversheet attached to writing sample.)

- B. If applicable, list up to five legislative drafts or court rules you have written or to which you contributed significantly. Refer to them by official citation, date, and subject matter.

Court Rules

I have served on three committees that drafted proposed new court rules or amendments to existing rules.

1. From July to September 2008, I was appointed by Chief Judge John Baker to serve on the Special Committee on Expedited Department of Child Services Appeals. Members included Judge Robb and Judge Crone from the Court of Appeals, DCS Director Payne, trial judges, and others. We discussed and drafted

a proposed rule amendment, which was adopted in large part by the Indiana Supreme Court as Appellate Rule 14.1.

2. In 2010 and 2011, I served on a committee that included members of the state bar association's Civil Rights for Children Committee, which drafted a proposed court rule requiring the appointment of counsel in juvenile delinquency cases. The proposed rule was subsequently adopted unanimously by the state bar's House of Delegates. I spoke in favor of the rule and answered questions both in the Board of Governors at the state bar's annual meeting and more recently before the Supreme Court Rules Committee. I also wrote a short article explaining and advocating for the rule in the state bar's monthly magazine: *Counsel for Indiana's Kids: A Modest Proposal*, Res Gestae, September 2011.

3. In 2013 I chaired a Task Force of the Indianapolis Bar Association Appellate Practice Section that crafted a proposal that would have permitted citation of memorandum decisions as persuasive precedent. Appellate Rule 65 has long prohibited lawyers from citing or relying on the nearly 75 percent of Indiana Court of Appeals' opinions issued as memorandum (not-for-publication) decisions. These opinions, however, are easily accessible on legal research websites and often provide helpful analysis when considering an issue. The executive committees of the Appellate Practice, Criminal Justice, and Litigation sections each supported the proposed rule, which was ultimately approved for submission to the Indiana Supreme Court Rules Committee by the IndyBar Board of Directors at its December 2013 meeting

The Rules Committee of the Indiana Supreme Court circulated the proposed rule for public comment. The Indiana Supreme Court ultimately decided not to adopt the proposed change, although it did make minor changes to the language of the existing rule, including shortening the deadline to file a Motion to Publish a memorandum decision, which was part of the Task Force's proposal.

Legislation

Although I have not drafted legislation, I have testified before legislative committees and offered less formal input to legislators and staff on two occasions: (1) the Bowser Commission, which considered legislation regarding the death penalty for mentally ill individuals (2007), and (2) the *Barnes v. State* Subcommittee and Senate Bill 1, which considered the rights of citizens to resist unlawful entry into their homes by police (2012).

- C. If applicable, list up to five of your contributions to legal journals or other legal publications. Provide titles, official citations, and a brief description of the subject matter.

1. *No Names, Please: The Virtual Victimization of Children, Crime Victims, the Mentally Ill, and Others in Appellate Court Opinions*, 42 Ga. L. Rev. 471 (2008).*

This article discussed the important privacy interests of those whose names, often along with very personal information, are used in appellate court opinions that are now widely available on the Internet. Relying on fairly recent cases, the article focused on victims of crime, mentally ill people, children in abuse and delinquency cases, and jurors. The article concluded with specific proposals for reform.

Shortly after publication, I sent the article to several state appellate and supreme court justices, many of whom responded quite favorably. For example, one chief judge from a state appellate court wrote that the article “could not have come at a more appropriate time as we had been discussing that very topic at our court meeting in August [2008]. I will draw the attention of the Court to your fine article with a recommendation that everyone read it.” Although the article discussed several Indiana cases, the concerns identified have since been remedied in Indiana through the protections of Administrative Rule 9.

2. *Expedited Appeals in Indiana: Too Little, Too Late*, 4 J. App. Practice & Process 215 (2002). This article surveyed the rules and practice regarding expedited appeals in Indiana. The rules have since been amended to prohibit extensions of time to file briefs in certain expedited cases.

3. Appellate Practice Manual (Indiana Public Defender Council, March 2008, revised in 2009, 2012).* The manual is more than 150 pages and includes the applicable court rules, case law, and strategic advice on the following topics: initiating the appeal, interlocutory appeals, motions practice, briefs and appendices, petitions for rehearing and transfer, and oral argument. The manual is made available on the Council website, on CD, and in hardcopy to hundreds of public defenders around the state.

4. *Recent Developments in Indiana Criminal Law and Procedure*, 47 Ind. L. Rev. 1043 (2014). For the past fourteen years, I have written the annual survey article on Indiana criminal law and procedure. The articles are about twenty-five single-spaced pages and include about 250 footnotes. They discuss significant cases decided the previous year by the Indiana Supreme Court and Court of Appeals as well as legislative developments related to criminal law and procedure. The survey articles have been cited in several law review articles and in opinions from the U.S. Court of Appeals for the Seventh Circuit, the Indiana Supreme Court, and the Indiana Court of Appeals.

- *Shaw v. Wilson*, 721 F.3d 908, 913 (7th Cir. 2013)
- *Lacey v. State*, 829 N.E.2d 518, 519 (Ind. 2005)
- *Saylor v. State*, 808 N.E.2d 646, 649-50 (Ind. 2004)
- *State v. Downey*, 770 N.E.2d 794, 797 n.5 (Ind. 2002)
- *Rodriguez v. State*, 785 N.E.2d 1169, 1177 (Ind. Ct. App. 2003)

5. *Criminal Justice Notes*, Res Gestae (the journal of the Indiana State Bar Association) (2002-present). Five times each year I write a column summarizing recent criminal cases for the state bar association's monthly magazine, which is distributed to its approximately 12,000 members. These columns have been cited in both law review articles and judicial opinions, including *Dixson v. State*, 865 N.E.2d 704, 717 (Ind. Ct. App. 2007).

- D. Identify the five most significant legal matters entrusted to you, whether as a judge or lawyer, and describe why you believe them to be so.

This is a difficult question to answer. The individuals involved in a dispute often regard their case as the most significant matter in their lives, and lawyers and judges have a duty to give each case—whatever the stakes—careful and thoughtful consideration. This is especially true when an individual's liberty or parental rights are at stake, as in most of the appeals I have litigated, including criminal, juvenile, adoption, mental health commitments, and contempt cases. I have included below five cases or categories of significant legal matters but in no way intend to diminish the significance of cases not listed.

1. *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007). In 2006 the Indiana Court of Appeals held that recent amendments to Indiana sentencing statutes no longer required trial courts to offer any supporting reasons when imposing a sentence in a felony case—a view that eviscerated longstanding precedent and would have made consistency in sentencing difficult, if not impossible. The public defender appointed to the case did not intend to seek review by the Indiana Supreme Court. After talking with counsel and visiting Mr. Anglemyer in prison, I agreed to petition the Indiana Supreme Court to review the case as pro bono counsel. The Court granted our petition to transfer, heard oral argument, and issued an opinion holding that sentencing statements are required in all felony cases because they are essential to fairness and meaningful appellate review. Because of the *Anglemyer* opinion, sentencing hearings do not simply end with the judge saying “six years,” or “twenty years” (both within the range for a Class B felony), but with a statement of reasons for the sentence, which will let the victim, the defendant, the lawyers, and the public know the reasons for the sentence and will engender a sense of fairness and justice for all.

The important principles announced in the case have since been cited in more than 2,000 Indiana opinions. A recent article by former Justice Frank Sullivan, Jr., referred to *Anglemyer* as “the single most important decision of the Indiana Supreme Court” during his nineteen-year tenure. See Frank Sullivan, Jr., *Selected Developments in the Indiana Constitutional Law (1993-2012)*, 47 Ind. L. Rev. 1217, 1255 (2014).

2. Civil commitment cases. I have been appointed to represent several individuals who have been involuntarily committed to a mental facility based on allegations that they are mentally ill and either (1) dangerous to themselves or others or (2) gravely disabled. Mental illness is generally not in dispute at these hearings, which sometimes presents challenges in communicating with clients. Recently, I represented T.K., a 47-year-old Marine veteran and father of two who was employed and renting a home when commitment proceedings were initiated against him. The VA, which pursued his involuntary commitment, offered only the testimony of a resident in psychiatry at the hospital where T.K. had been admitted for a few days. The doctor expressed concern that T.K. had used loud and unsavory language that upset people. The trial court ordered his involuntary commitment. After the Court of Appeals affirmed the commitment, I petitioned the Indiana Supreme Court to review the matter. After hearing oral argument, the Supreme Court granted review and reversed the trial court. In a unanimous opinion authored by Justice Dickson, the Court concluded that “T.K. made no physical outbursts, destroyed no property, did not put himself or others in actual danger with idiosyncratic behavior, and was not at risk of suffering a lack of food, clothing, or shelter. Instead, at best, the evidence suggests that T.K.’s loud, boisterous, and rude public behavior harmed his reputation and made others not want to be around him.” *In re Civil Commitment of T.K. v. Dep’t of Veterans Affairs*, 27 N.E.3d 271, 277 (Ind. 2015).

3. Juvenile and criminal cases where the State failed to prove the charge. In both criminal and juvenile delinquency cases, the Constitution requires the State to offer proof beyond a reasonable doubt. A criminal conviction or a juvenile adjudication can follow a citizen for the rest of his or her life, causing not only a social stigma but also reduced opportunities for employment. One of the first cases I was assigned by the Marion County Public Defender Agency involved a thirteen-year-old boy who, along with his friends, wanted to make a loud noise by combining toilet bowl cleaner and aluminum foil in a plastic bottle. They succeeded in their experiment, placing the bottle in a hole in the boy’s backyard, and a neighbor called the police, who arrested the boy. The State charged my client with possession of a destructive device under a 2002 statute passed in the wake of the September 11, 2001, attacks on our country. I argued that the two-liter bottle containing household items was neither a bomb nor “designed or redesigned for use as a ‘weapon,’” as required by the statute. In reversing the felony adjudication, the Court of Appeals concluded that

the evidence is clear that the boys did not intend that the bottle be used against another person or an animal. While it is possible that the bottle could have potentially been used to combat or contend against another person or animal, an item may only be classified as a destructive device if it was designed or redesigned for that purpose. Here, there is no evidence from which the juvenile court could have concluded that the bottle was designed to be used against a person or animal. Rather, the evidence established that the bottle was not a weapon because the boys took

precautions to make sure that no one was hurt and that nothing was damaged other than the bottle itself.

A.H. v. State, 794 N.E.2d 1147, 1150-51 (Ind. Ct. App. 2003). The Indiana Supreme Court or Court of Appeals has also found the State failed to prove charges in several other appeals that I litigated:

- *K.W. v. State*, 984 N.E.2d 610 (Ind. 2013) (resisting law enforcement)
- *Tharp v. State*, 942 N.E.2d 814 (Ind. 2011) (violation of a protective order)
- *Graham v. State*, 903 N.E.2d 963 (Ind. 2009) (resisting law enforcement)
- *Brown v. State*, 868 N.E.2d 464 (Ind. 2007) (identity deception)
- *Smith v. State*, 21 N.E.3d 121 (Ind. Ct. App. 2014) (felony enhancement for injury during resisting law enforcement)
- *Kribs v. State*, 917 N.E.2d 1249 (Ind. Ct. App. 2009) (entering a controlled area of an airport with a weapon)
- *Berberena v. State*, 914 N.E.2d 780 (Ind. Ct. App. 2009) (resisting law enforcement)

4. *In re Termination of I.B.*, 933 N.E.2d 1264 (Ind. 2010). In early 2010 the Court of Appeals held that indigent parents whose rights are terminated are not entitled to an appointed lawyer on appeal. Rather, counsel may only be appointed “under exceptional circumstances” as determined by the judge. I contacted the lawyer who represented the mother, a young lawyer who had never taken a case to the Indiana Supreme Court. I agreed to be co-counsel and drafted a petition for Indiana Supreme Court review, which was granted and set for oral argument. The Court agreed with our position in holding that “the right to counsel continues through all stages of the proceeding to terminate the parent-child relationship, including appeal.” *Id.* at 1268. Although the mother in I.B. did not regain her parental rights because she had not maintained contact with her lawyer to protect her right to appeal, the case created precedent that ensures parents in future cases will have the right to counsel on appeal and may secure a reversal in rare cases where a judge commits a serious error.

5. Serving as a judge *pro tempore*. When judges are unavailable to hear cases in Indiana, they may appoint a lawyer in good standing to preside as judge in their absence. I was appointed to preside over several proceedings soon after I became a lawyer, and I regard the incredible responsibility of presiding over those cases to be among the most significant legal work I have ever done. Whether deciding to sentence someone to prison or probation, or determining guilt or innocence in a bench trial, the decisions made on the trial bench are ones that have an enormous impact on the lives of individuals and were largely unassailable on appeal. Even deciding an appeal from small claims court involving about \$1,700—a large sum of money to the young couple whose ceiling near their chimney collapsed shortly after moving into their first home—was a case unlikely to be appealed any further because of the cost.

7. Efforts to Improve the Legal System, Administration of Justice, or Society

- A. Describe your efforts, achievements, or contributions (including written work, speeches, or presentations) toward the improvement of the law, the legal system, or the administration of justice.

Service on bar committees, articles that advocate for reforms, and even continuing legal education presentations can help advance the cause of improving the legal system and administration of justice. This section focuses on two topics not discussed elsewhere in this application: public policy reports and amicus briefs.

Public policy reports

I have written or contributed to reports analyzing and advocating reforms regarding the criminal justice system in Indiana and nationally.

1. From 2005-2007 I was the chair of the Indiana Assessment Team of the American Bar Association Death Penalty Moratorium Implementation Project. The seven-member Assessment Team held meetings to discuss several facets of the administration of the death penalty in Indiana, and I was responsible for overseeing the research, drafting, and editing of the final 400-page report.

2. From 2008-2009 I served as the reporter for the National Association of Criminal Defense Lawyer's (NACDL) Problem Solving Courts Task Force. I attended and questioned witnesses at hearings in cities throughout the country and drafted an eighty-page Task Force report in collaboration with Task Force members.

3. In 2011 I was the reporter for the "*Padilla* and The Future of the Defense Function" conference at Cardozo Law School in New York. The report was published in the Fordham Urban Law Journal. *Conference Report: Padilla and the Future of the Defense Function*, 39 Fordham Urb. L.J. 3 (2011).

4. I served as the reporter for the ABA/NACDL Focus Group entitled "National Indigent Defense Reform: The Solution is Multifaceted," which was held in Washington D.C., on January 9, 2012, and resulted in a forty-page published report.

5. Since January of 2014, I have been the reporter for the NACDL's Task Force on Federal Indigent Defense, which is examining the current state of the federal indigent defense delivery system, including the effects of sequestration and evaluation of the level of independence from the judiciary. This project has included numerous interviews of key stakeholders and meetings and conference calls with the Task Force. The report should be issued soon.

Amicus (friend of the court) briefs

In addition to filing many briefs on behalf of litigants in cases, I have also written several amicus, or friend-of-the-court, briefs. Amicus briefs allow interested and affected groups an opportunity (with permission of the court) to offer an additional, broader perspective on the case.

I have represented the Indiana Public Defender Council or Marion County Public Defender Agency in filing amicus briefs in four separate sentencing cases.

- Our brief in *Smylie v. State*, 823 N.E.2d 679 (Ind. 2005), offered a blueprint for the Indiana Supreme Court in considering whether Indiana's sentencing scheme violated the landmark U.S. Supreme Court case of *Blakely v. Washington*, 542 U.S. 296 (2004), which elevated the roles of juries in sentencing decisions.
- Similarly, our amicus brief in *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006), challenged a growing number of Court of Appeals' decisions that held defendants who pleaded guilty under a plea agreement that allowed some discretion at sentencing were precluded from challenging that sentence on appeal. In *Childress*, the Indiana Supreme Court agreed with our position and overruled several of those opinions.
- In *Akard v. State*, 937 N.E.2d 811 (Ind. 2010), I wrote an amicus brief on behalf of the Indiana Public Defender Council, after the Court of Appeals increased a sentence in a case from 93 to 118 years. The Indiana Supreme Court vacated the 25-year increase ordered by the Court of Appeals, emphasizing that the prosecutor had requested the 93-year sentence and not asked for more on appeal. Mr. Akard's lawyer allocated some of his oral argument time to me to address the issues raised in the amicus brief.
- In 2012, I authored an amicus brief discussing the important practical implications involving whether "imprisonment" includes both executed and suspended time for purposes of misdemeanor probation, an issue that impacts thousands of cases each year. The Court did not adopt our position in *Jennings v. State*, 982 N.E.2d 1003 (Ind. 2013), concluding that the phrase "term of imprisonment," as it is used in Indiana's misdemeanor sentencing statute, does not include time suspended from a sentence.

Outside of the sentencing realm, I drafted (with the help of students in the Appellate Clinic), an amicus brief in the so-called "Elkhart Four" case in which juvenile burglars were convicted of felony murder after a homeowner shot and killed one of their co-perpetrators. The brief filed on behalf of the Indiana Public Defender Council argues that the plain language of the statute does not permit a felony murder conviction when a third party other than the perpetrator(s) commits the killing. It included a national survey of statutory language from other states to highlight how Indiana's decisional law is inconsistent with its statutory language. The case was argued at the Indiana Supreme Court in February of this year; a decision has not yet been issued.

My amicus work has not been limited to criminal defense groups. I was approached by the Criminal Justice Section of the Indianapolis Bar Association in 2009 to write a brief in a case involving judges using risk assessment instruments at sentencing. No statute or court rule authorized their *ad hoc* use, and our brief represented the consensus position of judges, prosecutors, and defense lawyers—three groups who do not often agree—about concerns with their use and ways to address those concerns. The Court’s opinion, while authorizing the future use of these instruments, recognized these concerns and established ways to ensure their fair use. *See Malenchik v. State*, 928 N.E.2d 564 (Ind. 2010).

Finally, in May of 2011, the Indiana Supreme Court issued a highly publicized opinion that held “the right to reasonably resist an unlawful police entry into a home is no longer recognized under Indiana law.” *Barnes v. State*, 946 N.E.2d 572, 577 (Ind. 2011). This statement generated considerable negative press and protest, including criticism from the Attorney General and the Governor. I discussed with State Senator Mike Young the possibility of filing a brief asking the Court to reconsider and narrow its holding in light of Indiana’s robust self-defense statute, which had not been discussed in the briefs in that case. I drafted the brief, which Senator Young circulated to members of the General Assembly, and a bipartisan group of seventy one legislators signed on to the brief. In granting rehearing, the Court noted the “petitions for rehearing, advanced by thoughtful people, have convinced us that the appropriate course is to grant rehearing and speak further on the law of this case.” *Barnes v. State*, 953 N.E.2d 473 (Ind. 2011).

- B. Describe your efforts, achievements, or contributions (including written work, speeches, or presentations) concerning civic, political, or social issues.

As described below, I have been actively involved in the state bar’s Law School for Legislators’ program, the Indiana Supreme Court’s Law School for Journalists’ program, High School Education Outreach, writing op-ed articles, blogging on legal topics, and serving as a resource for media interviews.

Law School for Legislators

I have served on the state bar’s Law School for Legislators Committee and presented at three of the events, which offer legislators and legislative staff an opportunity to learn more about a contemporary legal topic. In November of 2011, Justice Dickson co-presented on the topic, “Opening the Courtroom Doors,” during which I discussed the various methods for selecting judges in Indiana and, through use of hand-held audience responders, engaged in an interactive presentation of how courts interpret statutes with specific examples from recent cases.

In 2012, I co-presented with then-Justice Loretta Rush on “Do You Have the Right to Remain Silent? A Discussion of the Differences Between Civil and Criminal Cases,” which also employed the hand-held responders. As did my 2014 presentation with Professor Cynthia Baker, “Welcome to Drug Court.”

Law School for Journalists

I twice participated in the Indiana Supreme Court’s Law School for Journalists. In Indianapolis in July 2011 I was part of a panel discussion (with Judges Bob Altice and Maria Granger) about sentencing, which was entitled “20 Years with 6 Suspended for Time Served.” In 2012, I co-presenter with Judge Barbara Harcourt on “Intro to Courts,” and also served as a lunch table discussion leader on “Ideas for Finding and Writing Stories Others Aren’t.”

Teacher/High School Education Outreach

Between 2009 and 2012, I participated in the Indiana Supreme Court’s summer teacher workshop. One morning during the two-week program, teachers visited the law school to participate in a mock law school class for which they are assigned a case to read in advance and during which I engaged in a gentle version of the Socratic teaching method.

I have collaborated with teachers from two Marion County high schools (Decatur Discovery Academy and Shortridge Magnet School for Law and Public Policy) in helping prepare instruction materials about the legal system. The teacher from Decatur brought his class to the law school for a tour and interactive class discussion. I spoke with the students at Shortridge on several different occasions, including a discussion about legal writing and about the issues in an appellate case that was scheduled for oral argument at the school. I have also taught juvenile justice there as part of the law school’s partnership that takes law faculty into the high school classroom to teach various subjects.

I have served as a volunteer judge for the “We the People” competition. This impressive program engages middle and high school students in a curriculum focused on better understanding the institutions of American democracy, including the Constitution and Bill of Rights. The competition is a simulated Congressional hearing in which students “testify” before a panel of volunteer attorneys, educators, and civic leaders. After asking questions during the hearing, the “judges” then offer the students constructive feedback.

Op-Ed Articles

Don’t Base Judicial Vote on a Single Case, Indianapolis Star, October 30, 2012. I advocated for Justice David’s retention based on the totality of his work on the

Indiana Supreme Court, despite my personal disagreement with the opinion he authored in *Barnes v. State*, which is discussed further in Question 7. A.

Overreaching Prosecutors Fail to Serve Justice, Indianapolis Star, July 15, 2011. I discussed recent cases of prosecutor overreaching, including one in which an Indiana prosecutor charged a high school senior who brought a blow-up doll to school as a prank with a C felony offense, which could have led to an eight-year prison sentence for the student who had no criminal history.

A Case for Veto of Court-Expansion Bill, Indianapolis Star, May 5, 2009. The article began: “Imagine a company does its job more efficiently than any similar company anywhere in the country. Its workload has remained steady over the last couple of years but has declined thus far in 2009. Employees might worry about downsizing in light of the tough economic times. Not in the world of government, though. It’s time for a 20 percent expansion. House Bill 1491 is government waste at its counterintuitive worst. At a price tag of more than \$2 million each year, it adds three new judges and 16 new staff positions to the 15-judge Indiana Court of Appeals. This is the same court that is rightfully proud of being the most efficient appellate court in the country. . . .” Governor Daniels ultimately vetoed the bill, which would have also replaced the merit selection of judges in St. Joseph County with elections.

Death Penalty Must Serve Justice, Not Retribution, Evansville Journal & Courier, March 17, 2007 (Co-author with Karen Mathis, President of the American Bar Association). This article summarized the findings of the ABA study described in Question 7.A.

Media Interviews and Blogging

I try to make myself available for media inquiries from reporters around the state (and beyond) who are working on stories in the areas of criminal law, juvenile justice, the appellate process, and the Indiana judiciary. I have been quoted in more than 100 newspaper articles throughout Indiana, including the *Indianapolis Star*, *Indiana Lawyer*, *Anderson Herald Bulletin*, *Elkhart Truth*, *Fort Wayne Journal Gazette*, *Kokomo Tribune*, *Martinsville Reporter-Times*, *New Albany News and Tribune*, *Terre-Haute Tribune Star*, and in numerous Associated Press stories, some of which have run in newspapers nationally, as well as national media outlets including NBC News, USA Today, and the Los Angeles Times. I have done more than twenty-five television interviews on Indianapolis affiliates and numerous radio interviews. Whether speaking to a reporter who is writing a story for national distribution or a reporter from a small-town paper, I strive to explain a topic in a manner that is both thoughtful and understandable to the public.

I have contributed to the Indiana Law Blog by offering commentary in more than 100 blog posts on topics related primarily to the Indiana judiciary, appellate procedure, and Indiana criminal law. Some of the blog posts require hours of compiling and analyzing court data or other research. I often receive favorable comments from lawyers from a variety of practice backgrounds about the posts. Several of the blog posts have later been cited by various media outlets or national blogs.

One of the most significant undertakings was our coverage of the 2010 and 2012 vacancies on the Indiana Supreme Court during which I wrote or collaborated on scores of entries on all aspects of the process and candidates, including summaries of all first-round and second-round interviews. The goal was to provide the public the opportunity to have an almost first-hand experience of attending the interviews and a better understanding of the process through which justices are selected.

- C. Describe your efforts, achievements, or contributions (including written work, speeches, or presentations) to improve your local, state, or national community through charitable work or public service.

The “public service” line is not always clear, but my contributions appear better included in the civic or administration of justice categories summarized in Parts A & B, above. Moreover, although I contribute to charities through United Way or directly, I have not held any offices with any charitable organizations.

- D. Describe the nature and extent of any *pro bono* legal services you have contributed.

I have had the privilege to represent several individuals in both appellate and trial proceedings on a *pro bono* basis. I agree wholeheartedly with the comment to Professional Conduct Rule 6.1 that “personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer.”

Pro Bono Cases Argued Before the Indiana Supreme Court

As summarized in Question 6.D., above, I have been involved in two significant pro bono cases taken to the Indiana Supreme Court. *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007) & *In re Termination of I.B.*, 933 N.E.2d 1264 (Ind. 2010).

Law School Appellate Clinic

In 2008 I created the Appellate Clinic at the law school through which second or third-year students who are certified legal interns represent indigent clients on appeal under my supervision. This Clinic is not part of my regular teaching load.

We file briefs on behalf of clients and have presented oral arguments in cases before both the Supreme Court and Court of Appeals. In two recent semesters, Adjunct Professor Patricia McMath assisted in the supervision of some of the Clinic's students.

Over the past six years the Clinic has represented more than thirty individuals, primarily in criminal cases referred through the Marion County Public Defender Agency. We have also accepted cases through other channels. For example, the trial lawyer in a child custody case from Greene County contacted me about representing his client, the mother of three children who lost custody to the paternal grandparents although she was not alleged to be unfit. *Henry v. Henry*, No. 28A05-1010-DR-696.

Finally, I recently agreed to serve as local counsel along with Stanford Professor Lawrence Marshall in representing Purvi Patel on appeal, No. 71A04-1504-CR-166.

Cases Referred Through the Pro Bono Commission

Beginning in 2010 the Clerk of the Supreme Court has emailed me the Case Summary or Notice of Appeal in every criminal case in which litigants are representing themselves. When appropriate, I contact the Pro Bono Commission, which sends letters to the litigants advising them to contact me if they are interested in assistance through the Appellate Clinic. I have communicated with a number of litigants through this process and ultimately represented four different individuals on appeal in these cases.

Juvenile Delinquency Cases

I have also represented or assisted other lawyers in representing juveniles *pro bono* in delinquency proceedings. For example, I represented a fifteen-year-old Jennings County boy with a minor history of delinquency in seeking an interlocutory appeal of the trial court's decision to waive his burglary case to adult court. The trial court certified the issue for interlocutory appeal, but the Court of Appeals declined to accept the case. *A.D. v. State*, No. 40A01-1102-JV-00030. In another case I served as co-counsel for a fifteen-year-old girl who was charged with child molesting for having consensual sex with another girl two years her junior. *A.S. v. State*, 79D03-0904-JD-163. We filed several motions challenging the prosecution, and the prosecutor agreed to offer a withheld judgment after the judge invited counsel into chambers to discuss the matter. Finally, I assisted with several Marion County juvenile cases involving the issue of out-of-state placements, after statutory changes gave power over such placements to the Department of Child Services. The documents I drafted were shared with lawyers and judges in other counties and used in a St. Joseph County case that was eventually appealed to the Indiana Supreme Court. *A.B. v. State*, 949 N.E.2d

1204, 1207 (Ind. 2011). The justices found no constitutional violation but expressed concern that the statute came “dangerously close to stifling the inherent empowerment our juvenile courts have always enjoyed in making decisions in the best interest of juveniles.” *Id.* at 1213. The Court imposed a requirement that the Director of the Department of Child Services not act in an arbitrary or capricious manner, which led the Court to affirm the out-of-state placement at issue in the case.

Assistance to Other Lawyers

Beyond representing clients in these specific cases, I regularly field questions on appellate and criminal matters from lawyers around the state and have volunteered to help lawyers prepare for oral arguments in more than 100 cases. Most of these have been criminal cases in which the defendant is represented by appointed counsel, but I have also assisted with civil and criminal cases in which litigants were represented by retained counsel. As explained in Question 8.A., I helped create the Appellate Institute through the Appellate Practice Section of the Indianapolis Bar Association to make the argument preparation assistance available to lawyers throughout the state.

- E. Indicate your experience teaching law. Provide the dates, names of institutions or programs, and a description of the subject matter taught.

I have been employed full-time by the Indiana University Robert H. McKinney School of Law since August 2001, after teaching as an adjunct professor beginning in August 1999. My approach to teaching is practical; through every course I strive to teach students how to practice law, especially the importance of effective written and oral communication.

My primary teaching responsibilities include the first year, two-semester Legal Analysis, Research, and Communication course. The course requires students to research and write three objective legal memoranda in the first semester and two persuasive briefs (one trial and one appellate) in the second semester. Every student must also present an appellate oral argument at the end of the second semester. Classes are fairly small, which offers an opportunity to meet individually with students and offer detailed critiques of their written work and oral presentations.

Since 2006 I have directed the Court Externship program, which places second and third-year law students with judges throughout Indiana during each semester and in farther reaches of the country during the summer. Students gain invaluable experience and a practical understanding of the court system through discussing, researching, and writing about a wide range of cases. I coordinate the placements, which includes interviewing students who apply for the program, holding approximately three classes each semester with all externs who are placed with a

judge, assigning and reading reflective essays, and holding at least two individual meetings with each student. The program has expanded over the years to include about thirty students each semester.

Nearly every summer for the past decade, I have taught a juvenile justice course. The class explores juvenile delinquency and status offenses from their investigation to resolution, including the constitutional rights of juveniles under police scrutiny, the decision to prosecute and alternatives to prosecution, the right to and role of counsel, waiver to adult court, adjudicatory and disposition hearings, and the array of rehabilitative and punitive sanctions. The assigned reading is my compilation of primarily U.S. Supreme Court and Indiana cases and statutes, which I update annually. At different points during the semester, a judge, prosecutor, and public defender from Marion County Juvenile Court speak to the students and answer questions about what they do.

For the past three years, I have taught state constitutional law. The assigned text is a collection of primarily Indiana Supreme Court cases, which I inherited from Justice Dickson and others who taught the course in the past. Paul Jefferson, the adjunct professor who teaches an evening section of the course, and I update the text every year to include new cases. The majority of the course focuses on the protections for individuals found in Article 1 of the Indiana Constitution, including a discussion of how each protection differs from its federal constitutional analog. Guest speakers have included members of the Indiana Supreme Court and advocates who regularly advance state constitutional issues.

In alternating years, I co-teach a seminar on judicial selection with Judge Timothy Oakes. Through readings we have compiled (no textbook exists), the class discusses the various methods for selecting judges throughout the United States, including lifetime appointments in the federal system, partisan and non-partisan elections in state courts, and the various iterations of merit selection. The course also addresses the interplay of selection and retention methods on judicial independence. Each student does a presentation near the end of the semester about a proposal for reform, and many students satisfy their advanced writing requirement by submitting a twenty-page paper, which is drafted in stages with multiple opportunities for feedback from both Judge Oakes and me.

As an outgrowth of the judicial selection seminar, Judge Oakes and I collaborated with the Indianapolis Bar Association to sponsor a CLE for lawyers and judges in March of 2014. Three of our best students each offered a unique, thoughtful, and well-delivered presentation under the broad topic: *Judicial Selection: Thinking Outside The Box*. In addition, I served as the supervising faculty member for the 2012 *Indiana Law Review* symposium entitled, "Reflecting on Forty Years of Merit Selection." The symposium was attended by more than 150 lawyers and judges. Presentations from distinguished local and national speakers focused on

the history and contemporary concerns with merit selection and addressed topics including retention elections, diversity, and proposals for reform.

I received the Indiana University Trustees Teaching Award in 2005 and 2014. The award honors professors who have had “a positive impact on learning through the direct teaching of students” and is limited to no more than 6% of faculty.

Finally, outside the classroom, I have assumed significant administrative responsibilities at the law school. I served as the chair of the Faculty Awards Committee in 2009-10, during which we spearheaded the successful nominations of colleagues for two IU and two IUPUI awards. I chaired the Academic Affairs Committee from 2012-14, which was responsible for approving any new courses or changes to the law school curriculum. I have been elected to serve on the five-member Executive Committee at the law school for the past three years. Finally, the Dean appointed me Director of Experiential Learning, effective October 1, 2014, a position that requires the promotion and oversight of the clinical, externship, and simulation courses within the curriculum.

Continuing Legal Education (CLE) Presentations

Beyond the presentations identified above, to groups such as Law School for Journalists or Law School for Legislators, I have presented numerous Continuing Legal Education (CLE) presentations throughout the state of Indiana as well as some practitioner-orientated presentations around the country.

Panelist, “Practice-Ready Clinical Innovations: Best Practices, Challenges and Vision,” Graduate Studies Lecture Series, Indiana University Robert H. McKinney School of Law, Indianapolis, Indiana, February 5, 2015.

Presenter, “Prosecutorial Misconduct: Protecting Clients, Preserving the Record,” Marion County Public Defender Agency, Indianapolis, Indiana, November 11, 2014.

Presenter, “Criminal Law,” ICLEF Indiana Law Update, Indianapolis, Indiana, September 24, 2014.

Presenter, “Motivating Students with the Modern Practice of Using Pictures in Appellate Briefs,” Western States Legal Writing Conference, Stanford Law School, Palo Alto, California, September 20, 2014.

Presenter, “Ten Pitfalls of Appellate Practice,” Fulton County Bar Association, Rochester, Indiana, August 21, 2014.

Co-Presenter (with Bonnie Hoffman), “Roundtable Discussion on the State of Federal Indigent Defense,” National Seminar for Federal Defenders, Cleveland, Ohio, May 28, 2014.

Presenter, “Significant Appellate and Criminal Law Developments,” Indiana Public Defender Council Appellate CLE, Indianapolis, Indiana, May 9, 2014.

Presenter, “A Look Back on 2013 and Ahead to 2014,” Marion County Public Defender Agency, Indianapolis, Indiana, March 28, 2014.

Presenter, “Ten Things Lawyers Should Know About Appeals,” Hancock County Bar Association, New Palestine, Indiana, December 2, 2013.

Co-Presenter (with James Bell), “2013 Criminal Case Law Update,” Indiana Continuing Legal Education Forum, Indianapolis, Indiana November 26, 2013 (webcast).

Co-Presenter (with Paul Jefferson), “Indiana Constitutional Law,” Indiana General Assembly, Indianapolis, Indiana, October 25, 2013.

Presenter/Panelist, “Critiquing our Critiques: Best Practices in Legal Writing Grading,” Central States Regional Legal Writing Conference, University of Kansas School of Law, Lawrence, Kansas, September 28, 2013.

Co-Presenter (with Ann Sutton), “Sentencing Advocacy in Death Penalty and Life Without Parole Appeals,” Indiana Public Defender Council Death Penalty/LWOP CLE, Columbus, Indiana, September 19, 2013.

Presenter, “Your First Criminal Defense,” Indiana State Bar Association Solo & Small Firm Conference, French Lick, Indiana, June 7, 2013.

Presenter, “Significant Appellate and Criminal Law Developments,” Indiana Public Defender Council Appellate CLE, Merrillville, Indiana, May 10, 2013.

Presenter, “Pictures and Images in Appellate Briefs and Opinions,” Southeastern Legal Writing Conference, Savannah, Georgia, April 27, 2013.

Co-Presenter (with Darren Bedwell), “Plea Agreements, Sentencing and Appeals,” Indianapolis Bar Association Attorney Apprentice Program, Indianapolis, Indiana, April 11, 2013.

Co-Presenter (with Judge Patricia Riley), “Preserving an Independent Judiciary,” Indiana State Bar Association Women’s Bench Bar Retreat, Culver, Indiana, March 2, 2013.

Presenter, “A Look Back on 2012 and Ahead to 2013,” Marion County Public Defender Agency, Indianapolis, Indiana, February 21, 2013.

Presenter, “A Stroll Through the Seldom Dull World of Indiana Criminal Law,” Ratliff-Cox Inn of Courts, Muncie, Indiana, February 6, 2013.

Co-Presenter (with James Bell), “2012 Criminal Case Law Update,” Indiana Continuing Legal Education Forum, Indianapolis, Indiana, December 10, 2012 (webcast).

Presenter, “Filing Issues, Recent Cases, and Our New Supreme Court,” Indianapolis Bar Association Primer on Indiana State Criminal Appeals, Indianapolis, Indiana, December 3, 2012.

Co-Presenter (with Judge Timothy Oakes), “So You Think You Could Do a Better Job on the Judicial Nominating Commission?,” Indianapolis Bar Association Destination CLE, Sedona, Arizona, November 17, 2012.

Presenter, “What Makes a Good Brief,” U.S. District Court for Southern District of Indiana and Federal Bar Association, Indianapolis, Indiana, November 8, 2012.

Panelist (with Chief Judge Margret Robb and Ms. Maggie Smith), “When and How to Appeal Under the 2012 Changes to the Indiana Rules of Appellate Procedure: A Roundtable Discussion,” Indiana State Bar Association Annual Meeting, Indianapolis, Indiana, October 26, 2012.

Moderator, “Collateral Consequences of Juvenile Adjudications,” Indiana State Bar Association Annual Meeting, Indianapolis, Indiana, October 25, 2012.

Co-Presenter (with Professor Megan Annitto), “Making the Case for Juvenile Appellate Advocacy,” Indiana Juvenile Public Defender Conference, Indianapolis, Indiana, October 12, 2012.

Presenter/Panelist (with Justice Mark Massa, Judge Jane Magnus-Stinson, and Judge Timothy Oakes), “Selecting Judges in Indiana,” Indianapolis Bar Association Young Lawyer’s Division Luncheon, Indianapolis, Indiana, June 21, 2012.

Presenter, “Criminal Law Update: Indiana Cases,” Indianapolis Bar Association Criminal Justice Section, Indianapolis, Indiana, June 6, 2012.

Presenter, “The Good, the Bad, and the Unknown in Criminal Appellate Law in Indiana (2012),” Indiana Public Defender Council Appellate CLE, Bloomington, Indiana, April 12, 2012.

Presenter, “A Look Back on 2011 and Forward to 2012,” Marion County Public Defender Agency, Indianapolis, Indiana, March 8, 2012.

Co-Presenter (with James Bell), “Criminal Law Update” as part of “Year in Review” seminar, Indiana Continuing Legal Education Forum, Carmel, Indiana, December 6, 2011.

Co-Presenter, “2011 Criminal Case Law Update,” Indiana Continuing Legal Education Forum, Indianapolis, Indiana, November 22, 2011 (webcast).

Moderator, “Access to Counsel for Kids in Juvenile Court,” Indiana State Bar Association Annual Meeting, French Lick, Indiana, October 20, 2011.

Co-Presenter (with Dr. Michael Jenuwine), “Incorporating Forensic Evaluations into Your Case: What You Don’t Know Can Hurt Your Client,” Indiana Public Defender Council Juvenile Defender Seminar, Indianapolis, Indiana, October 7, 2011.

Presenter, “Sentencing Advocacy on Appeal,” Indiana Public Defender Council Homicide/Death Penalty Defense Seminar, Merrillville, Indiana, September 22, 2011.

Co-Presenter (with Judge Cale Bradford and Jill Ellis), “Appeals 101: What You Need to Know About State Court Appeals,” Indianapolis Bar Association, Indianapolis, Indiana, July 28, 2011.

Presenter, “Hot Topics and Legislative Update: Indiana Criminal Law,” Indianapolis Bar Association Bench Bar Conference, French Lick, Indiana, June 17, 2011.

Presenter, “Recent Developments in Indiana Appellate and Criminal Law,” Indiana Public Defender Council, Indianapolis, Indiana, May 13, 2011.

Panelist (with Judge Melissa May and Deputy Attorney General Cynthia Ploughe), “Criminal Appeals Brown Bag Lunch Session,” ICLEF and ISBA Appellate Practice Section, Indianapolis, Indiana, May 13, 2011.

Presenter, “Recent Developments in Indiana Criminal Law and Procedure,” Martin University Law Day, Indianapolis, Indiana, April 30, 2011.

Moderator, “Sentencing Hearing & Sentencing Considerations,” and “The Sentencing Decision & Sentence on Appeal,” Indiana Judicial Center, Indianapolis, Indiana, April 27-28, 2011. These sessions were attended by approximately 150 trial judges from across the state and included a panel of Justice Steve David, Court of Appeals Judges Michael Barnes and Melissa May,

and trial court Judges Bob Altice and Maria Granger. In addition to a wide-ranging discussion of key sentencing principles and cases, during the first afternoon the participants were given four pre-sentence investigation reports and observed four mock sentencing hearings after which they recorded the sentence they would impose in each case. I compiled the results, which were discussed the following morning.

Presenter, “A Look Back on 2010 & Ahead to 2011: Significant Developments in Indiana Criminal Law and Procedure,” Marion County Public Defender Agency, Indianapolis, Indiana, February 24, 2011.

Presenter, “What is Wrong with this Brief?,” Federal District Court for Southern District of Indiana and Federal Bar Association, Indianapolis, Indiana, December 3, 2010. Participants were given a poorly written brief and discussed ways to improve it before receiving a very good sample at the end of the presentation. I also served on the committee that planned the day-long seminar, which included several judicial and attorney speakers.

Presenter, “Problem Solving Courts,” Indiana Public Defender Council Annual Update Seminar, Plainfield, Indiana, June 25, 2010.

Presenter, “Recent Developments in Indiana Appellate and Criminal Law,” Indiana Public Defender Council, Michigan City, Indiana, May 14, 2010.

Panelist (with Judge Edward Najam, Judge Margret Robb, and Geoffrey Slaughter), “Making Your Case: The Art of Persuading Judges, Indiana Style,” Appellate Practice Section of the Indiana State Bar Association, Indianapolis, Indiana, May 6, 2010.

Moderator, “Problem-Solving Courts Symposium: The Pros and Cons of Treatment in the Criminal Justice System,” National Association of Criminal Defense Lawyers and the New York State Bar Association, New York, New York, April 20, 2010.

Presenter, “A Look Back on 2009 & Ahead to 2010: Significant Developments in Indiana Criminal Law,” Marion County Public Defender Agency, Indianapolis, Indiana, January 22, 2010.

Co-Presenter (with Justice Brent Dickson and Karl Mulvaney), “The Art and Practice of Petitions to Transfer,” ICLEF Appellate Skills Institute, Indianapolis, Indiana, November 10, 2009.

Co-Presenter (with Ann Sutton and Steve Schutte), “Effective Brief Writing in Death Penalty Appeals,” Indiana Public Defender Council Death Penalty Defense Seminar, Indianapolis, Indiana, September 16, 2009.

Panelist, “Drug Courts 20 Years Later: Aiding or Impeding the Successful Recovery of the Addicted,” National Association of Criminal Defense Lawyers, 8th Annual State Legislative Network Conference, Boston, Massachusetts, August 7, 2009.

Small Group Facilitator, “Evidence and Objections Boot Camp,” Indiana Public Defender Council, Indianapolis, Indiana, July 31, 2009.

Presenter & Panelist, “Advocacy by Insult: An Empirical Study of Aggressive Advocacy in Appellate Briefs from Ten States,” Law & Society Conference, Denver, Colorado, May 29, 2009.

Presenter, “Appellate Trends and Petitions to Transfer,” Indiana Public Defender Council Appellate Skills CLE, Carmel, Indiana, May 8, 2009.

Presenter, “Petitions to Transfer,” Indiana State Public Defender, Indianapolis, Indiana, January 30, 2009.

Co-Presenter, “Ten Ways to Make Your Trial Record a Winner on Appeal,” Marion County Public Defender Agency, Indianapolis, Indiana, June 20, 2008.

Presenter, “Appellate Trends,” Indiana Public Defender Council Appellate Skills CLE, Terre Haute, Indiana, May 16, 2008.

Co-Presenter (with Dan Schroeder), “Jury Trials for Juveniles?,” Indiana Public Defender Council Juvenile Defense CLE, Terre Haute, Indiana, May 16, 2008.

Presenter, “Litigating Suppression Issues in Juvenile Cases,” Marion County Public Defender Agency, Indianapolis, Indiana, February 28, 2008.

Presenter, “Sentencing Strategies for 2008,” Marion County Public Defender Agency, Indianapolis, Indiana, January 24, 2008.

Co-Presenter, “Criminal Appeals Brown Bag Lunch Session,” Appellate Practice Survey, Indiana Continuing Legal Education Forum, Indianapolis, Indiana, October 23, 2007.

Co-Presenter, “Evaluating Fairness and Accuracy in State Death Penalty Systems: The Indiana Death Penalty Assessment Report and Prospects for Progress,” American Constitution Society, Indianapolis, Indiana, September 26, 2007.

Presenter, “The Place of Pop Culture in Persuading Trial and Appellate Courts,” Indiana University School of Law—Indianapolis Alumni Association (reunion weekend), Indianapolis, Indiana, May 18, 2007.

Presenter, “Appellate Potpourri: Appeal Bonds, Belated Appeals, and Recent Developments,” Indiana Public Defender Council Appellate Skills CLE, Lafayette, Indiana, May 18, 2007.

Co-Presenter, “Making Your Record for Appeal in Criminal Cases: Motions in Limine, Objections, and Offers of Proof,” Indianapolis Bar Association, Indianapolis, Indiana, May 11, 2007.

Presenter, “Protecting Privacy or Promoting Paternalism? The Use of Initials in Appellate Court Opinions,” Stetson College of Law, Gulfport, Florida, March 14, 2007.

Co-Presenter & Small-Group Facilitator, “Motions Practice, Part II (covering motions for stays, expedited review, emergency transfer, correction of the record),” Indiana Continuing Legal Education Forum, Appellate Skills Institute, Indianapolis, Indiana, November 2, 2006.

Co-Presenter, “Proportionality & 7(B) Review,” Indiana Public Defender Council Death Penalty Defense CLE, Indianapolis, Indiana, September 14, 2006.

Presenter, “Provocative Motion Practice, Thoughtful Standards of Review, & Thorough Legal Research,” Indiana Public Defender Council Appellate Skills CLE, Indianapolis, Indiana, May 19, 2006.

Co-Presenter, “Sentencing: Strategies for Success,” Marion County Public Defender Agency, Indianapolis, Indiana, April 28, 2006.

Presenter, “Appellate Motion Practice & Criminal Appeal Highlights,” Delaware County Bar Association, Muncie, Indiana, April 7, 2006.

Co-Presenter, “Appellate Motions: Can I Really Do That?,” Lorman Education Services Appellate CLE, Indianapolis, Indiana, March 23, 2006.

Small-Group Facilitator, “Appellate Defender Training,” National Legal Aid & Defender Association (NLADA), Chicago, Illinois, January 26-29, 2006 .

Presenter, “Petitions to Transfer,” Marion County Public Defender Agency, Indianapolis, Indiana, December 12, 2005.

Co-Presenter (with Dragomir Cosanici), “What We Can Learn & What We Can Teach From Citation Studies,” Central States Region Legal Writing Conference, Indianapolis, Indiana, September 24, 2005.

Co-Presenter, “Appellate Teamwork, Writing the Facts, and Oral Argument Advocacy,” Indiana Public Defender Council Death Penalty Defense CLE, Indianapolis, Indiana, September 16, 2005.

Presenter, “Beyond *Blakely*: The New World of Sentencing Appeals in Indiana (2005-),” Indiana Public Defender Council Appellate Skills CLE, Indianapolis, Indiana, May 20, 2005.

Presenter, “Maximizing Discovery in Indiana,” Indiana Public Defender Council, Indianapolis, Indiana, February 25, 2005.

Moderator/Organizer, “Your Audience Speaks: Candid Advice about Legal Writing from Indiana Appellate & Trial Judges,” Indiana State Bar Association Annual Meeting, Indianapolis, Indiana, October 14, 2004.

Presenter, “Expedited Appeals, Stays, and Appeal Bonds,” Indiana Public Defender Council Appellate Skills CLE, Bloomington, Indiana, May 21, 2004.

Small-Group Facilitator, “Appellate Defender Training,” National Legal Aid & Defender Association (NLADA), New Orleans, Louisiana, December 4-7, 2003.

Simulated Problem Designer (a criminal appeal), “Developing Appellate Skills,” Indiana Continuing Legal Education Forum, Indianapolis, Indiana, November 13, 2003.

Co-Presenter, “Writing Effective Motions,” Marion County Public Defender Agency, Indianapolis, Indiana, August 8, 2003.

Presenter, “Emerging Legal Trends,” Indiana Public Defender Council Appellate Skills CLE, Indianapolis, Indiana, May 16, 2003.

Presenter, “An Indiana Supreme Court Clerk’s Perspective,” Indiana Public Defender Council Appellate Skills CLE, Merrillville, Indiana, May 10, 2002.

8. Memberships and Other Activities

- A. List any memberships and offices you have held in professional organizations, including dates and descriptions of the purposes of the organizations and of your involvement.

1. Indiana State Bar Association

I have been a member of the Indiana State Bar Association since 2002 and am a member of the Appellate Practice and Criminal Justice Sections. I have presented at

numerous continuing legal education seminars sponsored by sections of the state bar as described in Question 7.E. I was also appointed chair of the Appellate Practice Section's Listserv Committee in 2011, which drafted rules for the creation of a listserv that allows section members to post and respond to questions from other members.

I have also been actively involved with the ISBA's monthly journal, *Res Gestae*. I was co-chair of the Written Publications Committee from 2003-08 and 2009-13. The co-chairs are responsible for soliciting reviews of submitted articles and communicating with authors in revising articles for publication in the magazine. Since 2002 I have also written the "Criminal Justice Notes" column five times annually, which summarizes recent Indiana Supreme Court and Court of Appeals opinions.

As described in Question 7.E., I have served on the Law School for Legislators Planning Committee and presented at three different programs.

From December 2013 until October 2014, I was the chair of the HJR-3 Special Committee, which was created to discuss the state bar's response to the proposed constitutional amendment regarding same-sex marriage. The Committee discussed and drafted a resolution—and secured several co-sponsoring committees—for consideration by the House of Delegates at its October 2014 annual meeting. The Committee ultimately withdrew the resolution days before the annual meeting when the U.S. Supreme Court denied review in several cases, included one from Indiana, which effectively mooted the issue.

I received two awards from the Indiana State Bar Association at its annual meeting in October 2014. The descriptions below were read by the presenter:

Presidential Citation: Professor Schumm has been an active leader in the ISBA starting with his work as co-chair of the State Bar's Written Publication Committee. He is a longtime contributing author for *Res Gestae* articles. Joel has served on several ISBA CLE panels and is considered the "must see" speaker of the Law School for Legislators program we hold every year. Joel has also given his time and talents to several ISBA special committees and projects. For example, Joel was instrumental in advocating for and the successful adoption of a proposed rule for the right of counsel in juvenile court proceedings. This year Joel took on the task of chairing the ISBA HJR 3 Special Committee. He thoughtfully helped the committee navigate the pros and cons of presenting a resolution to the House of Delegates by crafting a resolution that speaks directly to the pitfalls of amending the Indiana Constitution.

David M. Hamacher Service Award: Professor Schumm is described as an Indiana treasure. Not only is Professor Schumm a model appellate practitioner in his own right, but is also producing the next generation of appellate practitioners in his

Appellate Law Clinic at the IU McKinney School of Law. In addition, Professor Schumm is a ready resource to the entire criminal appellate practice bar and is often the “go to expert” on a wide range of Indiana legal issues for the popular press. He also blogs on important topical legal issues and is often the author of the Criminal Appeals summary for ISBA’s Res Gestae.

2. Indianapolis Bar Association

I have been a member of the Indianapolis Bar Association since 2002 and am a member of its Appellate Practice and Criminal Justice sections.

I have served on the Amicus Committee for the past three years, through which I reviewed requests for amicus participation and assisted in reviewing briefs drafted on behalf of the section. Before joining the Committee, I authored an amicus brief on behalf of the Appellate Practice and Criminal Justice sections to the Indiana Supreme Court in the *Malenchik* case as discussed Question 7.A.

In 2012, I received the John Morton-Finney Award for Excellence in Legal Education for my work as a member of the steering committee of the IndyBar Review.

I have served on the executive committee of the Appellate Practice section since 2010. I was the treasurer in 2014 and am the secretary this year, a path that will lead to Vice Chair and Chair in the coming years. Through that committee, I was involved in creating the Indiana Appellate Institute, a resource available to lawyers throughout the state who have oral arguments scheduled before the Indiana Supreme Court or Court of Appeals. Modeled after the Supreme Court Institute at Georgetown Law School, the Indiana Appellate Institute offers “moot” or practice argument sessions before a panel of experienced appellate advocates, former judicial clerks, and law professors well-versed in the subject matter of the case and general appellate court procedures.

3. American Bar Association

I have been a member of the American Bar Association since 2002. I worked on two significant reports for the ABA as described in Question 7.A.

4. Legal Writing Institute

I have been a member of the Legal Writing Institute (LWI) since 2001. LWI is “a non-profit organization dedicated to improving legal writing by providing a forum for discussion and scholarship about legal writing, analysis, and research. LWI promotes these activities through its publications, workshops, specialty conferences, and the national biennial conferences held in even-numbered years.” I have attended and presented at its conferences and was on the site committee for the 2008

conference, which was held in Indianapolis and attended by more than 600 people. From 2004 to 2008, I served on the editorial board of the *Journal of the Legal Writing Institute* and was responsible for reviewing, editing, and making publication decisions about submitted articles.

- B. List any memberships and offices you have held in civic or charitable organizations, including dates and descriptions of the purposes of the organizations and of your involvement.

None

- C. List any memberships you hold in social clubs or organizations. If any restrict its membership on the basis of race, sex, religion, or national origin, please describe your efforts within the organization to eliminate restrictions.

None

- D. Describe your hobbies and other leisure activities.

I enjoy running, usually five days each week and a couple of half marathons each year. I enjoy domestic and international travel, visiting both new places and old favorites. For a truly humbling experience, I like to play sports or card and video games with my ten nieces and nephews.

9. Legal Proceedings

- A. List any lawsuits or legal proceedings in any jurisdiction, including but not limited to bankruptcies, dissolutions, and criminal matters to which you have been a party. Provide dates, case numbers, courts, names of other parties, and, if needed, a brief explanation. (If minor children are involved [i.e. an adoption], use initials only.)

Schumm v. The Mansion Apartments (Hamilton County, Ohio, Small Claims Court): I brought suit against an apartment complex in late 1993 to seek return of the \$265 I had paid as a security deposit. The apartment complex failed to clean and prepare the apartment by the agreed upon move-in date, and I had to find another place to live. I prevailed and was awarded \$265.

Schumm v. State, No. 02A03-0608-CV-388. I prevailed in an appeal of a case involving an inoperable taillight. 866 N.E.2d 781 (Ind. Ct. App. 2007).

- B. If you ever have been arrested or cited for any violation of the law other than for routine traffic violations, provide dates, jurisdictions, and an explanation of the event and its resolution.

Not applicable

- C. If you have been disciplined or cautioned, formally or informally, by the Indiana Supreme Court Disciplinary Commission, by the Indiana Commission on Judicial Qualifications, by the Indiana Supreme Court, or by similar entities in any other jurisdiction, identify each instance by date, case number (if applicable), and describe the circumstances and the nature of the outcome or resolution.

Not applicable

- D. If you have any outstanding federal, state, or local tax obligations, please itemize and explain.

Not applicable

10. References

- A. Provide the names of three attorneys who have been your professional adversaries in your practice or who have litigated substantial cases in your court and who would be in positions to comment on your qualifications for appointment to the Court of Appeals of Indiana (contact information to be included in Part Two of this application).

Joseph Ho, Joby Jerrells, and Andrew Kobe

- B. Provide the names of three professional references other than those listed in Subsection 10A (contact information to be included in Part Two of this application).

Theodore R. Boehm, Andrew R. Klein, and Judge Paul D. Mathias

- C. Provide the names of three personal references other than those listed in Subsection 10A or 10B (contact information to be included in Part Two of this application).

Cynthia Adams, Cynthia Bedrick, and Judge Timothy Oakes

11. State Police Release Form and Photograph

- A. Complete a State Police release form printed on green paper (you may obtain the release form by contacting the Nominating Commission Office at 317-232-4706). Include the release form with the original application only and not with the copies.
- B. Attach a recent photograph of you to the front of the original application and to each copy of your application. (This allows the Commission members to put a face with a name if you are interviewed in person.)

DATE

APPLICANT'S SIGNATURE

PRINTED NAME